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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,137	04/02/2004	Scott Kerwin	146185 (553-1102)	1504
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DEAN D. SMALL THE SMALL PATENT LAW GROUP LLP 225 S. MERAMEC, STE. 725T ST. LOUIS, MO 63105			EXAMINER FISHER, MICHAEL J	
			ART UNIT 3689	PAPER NUMBER
			NOTIFICATION DATE 03/19/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docket@splglaw.com

Office Action Summary

Application No.

10/817,137

Applicant(s)

KERWIN ET AL.

Examiner

MICHAEL J. FISHER

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 6,270,460 to McCartan et al. (McCartan).

As to claims 1,24, McCartan discloses a method for tracking use of an ultrasound probe (title), storing "different types" of tracking information in the probe (col 4, lines 61-64), which tracking information would include probe information (such as how many initializations occurred in that probe) , accessing the stored tracking information within the ultrasound probe (col 6, lines 23-27). McCartan does not, however, teach storing the information in a connector of the probe. McCartan does teach using the system to send messages (steps 610,710, 810), therefore, it would have been obvious to one of ordinary skill in the art to save the message to ensure that only those probes which

require disabling are disabled and to save a record to show why the probe was disabled. Further, the examiner takes Official Notice that external drives (such as so-called Zip or thumb drives) of old and well known in the art and therefore, it would have been obvious to one of ordinary skill in the art to use an external drive, which would necessarily be connected to the probe, to save the data in order to ease transference of the data and to ensure that it is saved.

As to claim 2, the information is updated based on the use (the fuses blow after use), storing the updated tracking information (col 6, lines 23-27).

As to claim 3, the data includes duration of use (col 4, line 59).

As to claim 4, the data comprises individual scan session use information (the fuses blow after each use).

As to claim 5, the information can also be mode of operation information (col 5, lines 2-7).

As to claim 8, the storing is done periodically (upon initialization).

As to claim 9, McCartan discloses saving information within a system in connection with the probe (col 6, line 64-col 7, line 4).

As to claim 10, the memory is in the probe (col 6, lines 23-27).

As to claim 11, there would inherently be a predetermined address or else the information could be saved in the wrong place and thus, not be retrievable.

As to claim 12, the memory is non-volatile (col 6, lines 41-43).

As to claim 14, the information is retrieved from the probe (col 6, line 64-col 7, line 4).

As to claim 16, the data includes duration of use and is updated (col 4, line 59).

As to claim 17, probe usage is tracked (col 7, lines 6-9).

As to claim 18, the information includes cumulative tracking information and current use information (the number of fuses blown would include both cumulative tracking information and current use information as the fuses are blown upon powering up.

As to claim 19, the number of blown fuses is prior use information.

As to claim 25, the memory is accessed by the scanner as it is inputted from the scanner.

As to claim 26, there is inherently an interface for reading from and writing to the memory as the information is read from and written to the memory.

As to claim 27, the data includes duration of use (col 4, line 59).

As to claim 15, the data includes duration of use (col 4, line 59), which is when the probe is connected to the system, there is probe identification information in the probe (col 7, lines 1-2), storing the information, including duration of use in the probe (col 6, lines 23-27).

McCartan does not, however, teach storing the information outside the probe. McCartan does teach using the system to send messages (steps 610, 710, 810), therefore, it would have been obvious to one of ordinary skill in the art to save the message to ensure that only those probes which require disabling are disabled and to save a record to show why the probe was disabled.

As to claim 5, it would have been obvious to one of ordinary skill in the art to use mode of operation information as different modes of operation affect the probe in different ways.

As to claim 6, it would have been obvious to one of ordinary skill in the art to modify the system as taught by McCartan by using probe temperature information for tracking as the temperature at which a probe operates affects its lifetime.

As to claim 7, McCartan does not specifically teach storing the information when the probe is turned off, however, as McCartan teaches storing time of use information, it would have been obvious to one of ordinary skill in the art to store the information when the probe is turned off as turning off the probe affects the duration of use.

As to claim 13, it would have been obvious to one of ordinary skill in the art to access the information upon powering up the probe as, otherwise, a probe that should be disabled could be used if the information is not checked before use.

Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCartan as applied to claims 1-19 24-27 and above, and further in view of US PAT 7,156,551 to Ramamurthy et al. (Ramamurthy).

As to claim 20, the data includes duration of use (col 4, line 59), which is when the probe is connected to the system, there is probe identification information in the probe (col 7, lines 1-2), storing the information, including duration of use in the probe (col 6, lines 23-27).

McCartan does not, however, teach storing the information outside the probe. McCartan does teach using the system to send messages (steps 610,710, 810),

therefore, it would have been obvious to one of ordinary skill in the art to save the message to ensure that only those probes which require disabling are disabled and to save a record to show why the probe was disabled. McCartan further does not teach checking and storing temperature information.

Ramamurthy teaches a method of checking faults in ultrasound equipment (title) using temperature (Abstract, line 1-line 3). It would have been obvious to one of ordinary skill in the art to modify the system as disclosed by McCartan with the temperature-checking feature as disclosed by Ramamurthy as both are directed toward ensuring the proper functioning of ultrasound equipment and further, Ramamurthy teaches this as being used to upgrade ultrasound equipment already in use (abstract, lines 8-10).

As to claim 21 McCartan does not specifically teach storing the information when the probe is turned off, however, as McCartan teaches storing time of use information, it would have been obvious to one of ordinary skill in the art to store the information when the probe is turned off as turning off the probe affects the duration of use.

As to claim 22, McCartan does not teach periodically tracking and storing the information during a current scan. It would have been obvious to one of ordinary skill in the art to periodically track and store the information in case of a power outage so the data is not lost.

As to claim 23, the memory is non-volatile (col 6, lines 41-43).

Response to Arguments

Applicant's arguments filed 11/11/08 have been fully considered but they are not persuasive. As to arguments in relation to "removably connected", this has been addressed in the above rejection, as to arguments in relation "different types of information", this phrase is broad and is met by the storing of nearly any information as the "different types" are not claimed. As to arguments in relation to recording temperature checking, the Ramamurthy reference was used to note that it is old and well known in the art to check temperature, not as a template for upgrading probes.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. FISHER whose telephone number is (571)272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MF
3/16/09

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689
3/16/09